

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2002-190-C - ORDER NO. 2003-167

MARCH 24, 2003

IN RE: Application of Accxx Communications, LLC	)	ORDER
for a Certificate of Public Convenience and	)	APPROVING
Necessity to Operate as a Reseller of	)	APPLICATION
Interexchange Telecommunications Services	)	
and for Alternative Regulation.	)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Accxx Communications, LLC ("Accxx" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. Accxx requests that the Commission regulate Accxx's long distance business services, consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C (now known as "modified alternative regulation"). The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Accxx to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Accxx's application and of the manner and time in which to file the appropriate pleadings for participation in

the proceedings. Accxx complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or protests regarding the application were received by the Commission.

A hearing was convened on January 8, 2003, at 2:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Accxx was represented by Scott Elliott, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Michael A. Conway, Manager of Accxx, appeared and testified in support of the application. Mr. Conway described the Company's financial, managerial, and technical ability to provide telecommunications services as described in the Company's Application.

Accxx was incorporated on March 1, 2001, under the laws of the State of Delaware. On March 13, 2002, Accxx was issued, by the South Carolina Secretary of State, a Certificate of Authority to transact business in the State of South Carolina.

In explaining the services which Accxx intends to offer, Mr. Conway testified that Accxx proposes to provide, on a resale basis, interLATA direct-dialed services, including (1+) service, flat rate service, 800 inbound service and travel cards within South Carolina. Accxx has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority. The Company does not intend to offer prepaid calling cards in South Carolina. Accxx will arrange for the traffic of underlying subscribers to be routed directly over the networks of the Company's network providers. The Company intends to utilize Qwest, Global Crossing,

and Willtel as its underlying carriers. The testimony reveals that Accxx will choose its underlying carriers based upon the quality of service of the carrier properly certified by the Commission to provide such service.

Accxx is currently authorized to provide interexchange telecommunications services in many states, including California, Georgia, Vermont, and North Carolina. The testimony reveals that Accxx has never had an application for a certificate of public convenience and necessity denied. Mr. Conway also pledged that the Company will at all times provide and market interexchange carrier services in accordance with current Commission policies. According to the testimony, Accxx has not provided any intrastate telecommunications services within the State of South Carolina. The Company intends to charge the tariffed rates approved by the Commission. Further, Accxx will market its services via direct sales by the Company's employees and independent sales agents.

Mr. Conway also presented testimony regarding Accxx's technical, financial, and managerial resources to provide telecommunications services in South Carolina. According to the testimony, Accxx's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Mr. Conway is responsible for the development, implementation, and roll out of Accxx. Prior to joining the Company, Mr. Conway held executive level positions with Erbia Network, Inc., Long Distance International, Inc. and LDC Telecommunications. In all three companies, according to the record, he developed and implemented these three companies' respective wholesale and retail products, rates, commissions, contracts, along with developing and managing the Operations teams and

procedures to support these products. Mr. Stephen M. Dorsett is the Company's Secretary and co-founder. Mr. Dorsett is responsible for assistance in strategic planning and financial modeling as well as general corporate governance. Mr. Dorsett is a Certified Public Accountant, a member of the American Institute of Certified Public Accountants and the Texas Society of Public Accountants.

As to technical qualifications to provide the requested services, Accxx will operate as a switchless reseller. According to the testimony, Accxx has a robust back office. Further, Accxx's customer service department handles all customer service requests. An employee is available to answer calls in the customer service department from 8 a.m. until 9 p.m. eastern standard time. After hours, customers who call the customer service department and leave a message will be contacted by the Company as soon as practicable. In handling a request for services for a potential new customer, Accxx utilizes written letter of authorizations and voice log third party verification services.

Regarding the Company's financial resources to offer telecommunications services in South Carolina, Accxx filed updated financial statements after the hearing. The unadjusted balance sheet dated December 2002 shows the Company's total current assets as \$1,920,495.41 and its total current liabilities as \$1,182,300.63. Accxx, as of December 2002, had total liability and equity of \$2,115,102.56.

Accxx indicates a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. Accxx requested that all of its long distance business

service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Accxx's intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with regard to certain "operator assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Mr. Conway's testimony, Accxx seeks a waiver from the Commission Rules and Regulations. Accxx requests a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina. Specifically, Accxx seeks to maintain its books and records at its principal place of business. According to the Application and testimony, the Company's principal place of business is Florida. Finally, Mr. Conway stated that Accxx will abide by all the Commission's rules, regulations and Orders upon receiving certification to operate as a telecommunications provider in South Carolina.

After full consideration of the applicable law, Accxx's Application, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Accxx is a privately-held corporation duly organized and existing under the laws of the State of Delaware and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. Accxx is a provider of interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Accxx has the managerial, technical, and financial resources to provide the services as described in its application.

4. The Commission finds that Accxx should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.

5. The Commission finds it appropriate to approve modified alternative regulation for Accxx's long distance services in accordance with the principles and procedures set out in Order Nos. 95-1734 and 96-55, as modified by Order No. 2001-997.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that a Certificate of Public Convenience and Necessity should be, and hereby is, granted to Accxx to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS),

directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the interexchange business services of Accxx consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as “modified alternative regulation.”

Under the Commission approved modified alternative regulation, the business service offerings of Accxx, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The

Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Accxx also.

3. With regard to any residential interexchange service offerings of Accxx, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. With regard to residential interexchange service rates, Accxx shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. Accxx shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of Accxx's subscribers shall



constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

5. If it has not already done so by the date of issuance of this Order, Accxx shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be consistent with the findings of this Order and shall be consistent with South Carolina law, including the Commission's Rules and Regulations.

6. Accxx is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Accxx's interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Accxx shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If Accxx changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Accxx shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to

the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Accxx shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Accxx shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, Accxx shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). The two-page form Accxx is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses.

11. Accxx shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Accxx shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

Accxx shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form Accxx is required to use by which to file the authorized utility representative information may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). This form is entitled "Authorized Utility Representative Information." Further, Accxx shall promptly notify the Commission in writing if any representatives are replaced.

Accxx shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2001).

12. Accxx shall conduct its business in compliance with Commission decisions and Orders, both past and future.

13. With regard to Accxx's request for a waiver 26 S.C. Code Regs. 103-610 of the Commission's Rules and Regulations, the Company is hereby granted a waiver of 26 S.C. Code Regs. 103-610. As to Accxx's request for a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina, Accxx is granted this waiver and may maintain its books and records at its headquarters office in Florida, on the condition that these records be made available for examination by the Commission at reasonable hours.

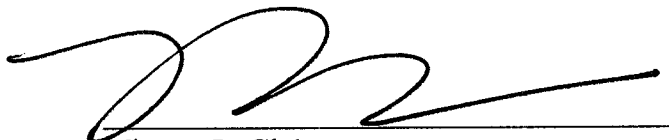
14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.

15. Accxx is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. This Order shall remain in full force and effect until further Order of the Commission.

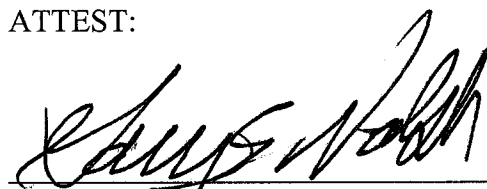
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn  
Chairman

ATTEST:



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Gary E. Walsh  
Executive Director

(SEAL)